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SUPREME COURT OF APPEALS OF VIRGINIA.

MOUNTAIN LAKE LAND CO. v. BLAIR.

Jan. 14, 1909. Rehearing Denied March 4, 1909.

[63 S. E. 751.]

1. Corporations (§ 216*)—Foreign Corporations—Stockholder's Liability—Conflict of Laws.—Where a domestic corporation becomes a stockholder in a foreign corporation, the liability of the domestic corporation to creditors of the foreign corporation must be determined by the laws of the foreign state.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. § 830; Dec. Dig. § 216.*]

2. Evidence (§ 80*)—Presumptions—Laws of Other State.—In the absence of proof as to the laws of a sister state, the court will presume that the common law prevails there, and that it is the same as the laws of the domestic state.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 101; Dec. Dig. § 80.* See, also, 3 Va.-W. Va. Enc. Dig. 29.]

3. Evidence (§ 35*)—Judicial Notice—Laws of Other State.—The courts of Virginia will not take judicial cognizance of the laws of its sister states, at variance with the common law.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 51; Dec. Dig. § 35.* See, also, 6 Va.-W. Va. Enc. Dig. 239.]

4. Corporations (§ 259*)—Stockholder's Liability—Right to Enforce—Creditors.—Creditors of a corporation may compel payment of the stock subscribed, so far as it is necessary for the satisfaction of the debts due by the company, as the whole subscribed capital is a trust fund for the payment of creditors when the company becomes insolvent.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. § 1055; Dec. Dig. § 259.* See, also, 3 Va.-W. Va. Enc. Dig. 524.]

5. Corporations (§ 244*)—Transfer of Stock—Liability—Creditors.—A transferee of corporate stock subscribed, with notice that it has not been paid for, is liable to creditors to the same extent as the original holder.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. § 960; Dec. Dig. § 244.* See, also, 12 Va.-W. Va. Enc. Dig. 816.]

6. Corporations (§ 259*)—Foreign Corporations—Stockholder's Liability—Foreign Attachment—Equity Jurisdiction.—A foreign corporation doing business in the state transferred its stock to a non-resident for the use and benefit of a domestic corporation, which as beneficial owner of the stock converted the assets of the foreign cor-

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

poration. Held, that a court of equity in the domestic state has jurisdiction at the instance of a domestic creditor to enforce by foreign attachment against the domestic corporation the liability of the non-resident legal holder of the stock of the foreign corporation for the unpaid stock.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. § 1060; Dec. Dig. § 259.* See, also, 12 Va.-W. Va. Enc. Dig. 832, 833.]

7. Corporations (§ 259*)—Foreign Corporations—Stockholder's Liability—Foreign Attachment—Equity Jurisdiction.—A suit by a domestic creditor to enforce by foreign attachment the liability of a domestic corporation as the holder of stock in a foreign corporation for a debt due to complainant by such foreign corporation was not one which interferes with the domestic affairs of a foreign corporation, or a suit to wind up its affairs, so as to defeat the jurisdiction of the court.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. § 1060; Dec. Dig. § 259.* See, also, 12 Va.-W. Va. Enc. Dig. 832, 833.]

8. Corporations (§ 265*)—Stockholder's Liability—Enforcement—Parties.—In an action by a creditor to enforce the liability of a stockholder on unpaid stock subscription, other creditors or other stockholders are not necessary parties.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. § 1107; Dec. Dig. § 265.* See, also, 12 Va.-W. Va. Enc. Dig. 823.]

9. Corporations (§ 279*)—Stockholder's Liability—Contribution.—Where a stockholder is compelled to pay more than his proportionate share of the debt arising from unpaid stock subscriptions, he may have contribution from the remaining stockholders.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. § 1178; Dec. Dig. § 279.* See, also, 12 Va.-W. Va. Enc. Dig. 812.]

10. Corporations (§ 259*)—Foreign Corporations—Stockholder's Liability—Enforcement—Equitable Jurisdiction—Statutes.—Code 1904, § 1103a, providing that all suits for the recovery of unpaid stock subscriptions to the stock of any joint-stock company shall be brought in the courts of common law in the county or corporation in which defendant resides, if he be a resident of the state, and providing that such court shall have exclusive jurisdiction to hear and determine all questions involving the validity of the subscriptions, and providing that nothing therein should be construed to deprive courts of chancery of their jurisdiction to settle and wind up the affairs of an insolvent corporation, does not deprive an equity court of jurisdiction of a suit by a resident creditor against a domestic corporation which holds stock of a foreign corporation, by the assignment thereof to a nonresident for its benefit, to enforce by foreign attachment the liability of the nonresident holder for unpaid stock subscriptions, where

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

the domestic corporation does not question the validity of the subscription, as there is no legal liability to be enforced.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. § 1060; Dec. Dig. § 259.* See, also, 12 Va.-W. Va. Enc. Dig. 817.]

11. Judges (§ 32*)—Death of Judge—Confirmation of Vacation Decree.—A vacation decree, entered on the court's own motion, under Codé 1904, § 3427, authorizing vacation decrees, if invalid, is rendered valid where, upon the death of the judge entering the decree, his successor at a regular term of the court, and having full jurisdiction of the subject-matter and the parties, ratified and adopted the decree of the deceased judge as the decree of the court.

[Ed. Note.—For other cases, see Judges, Cent. Dig. § 158; Dec. Dig. § 32.* See, also, 8 Va.-W. Va. Enc. Dig. 157, 316.]

12. Equity (§ 410*)—Commissioner—Report—Exceptions—Determination.—Multitudinous exceptions, taken during the progress of taking depositions in an equity case, are properly overruled in a general way without passing on each exception in detail, where there was sufficient evidence, which was free from all reasonable objection, to sustain the conclusion reached.

[Ed. Note.—For other cases, see Equity, Cent. Dig. § 919; Dec. Dig. § 410.* See, also, 1 Va.-W. Va. Enc. Dig. 593.]

13. Equity (§ 410*)—Report of Commissioner—Exceptions—Determination.—Numerous exceptions taken to the report of a commissioner, and which are without merit, are properly overruled as a whole, and need not be passed upon in detail.

[Ed. Note.—For other cases, see Equity, Cent. Dig. § 919; Dec. Dig. § 410.* See, also, 11 Va.-W. Va. Enc. Dig. 751.]

14. Equity (§ 408*)—Commissioner's Report—Analysis of Evidence.—There is no objection to the commissioner in equity filing with his report an analysis of the evidence that has been submitted to him.

[Ed. Note.—For other cases, see Equity, Cent. Dig. § 901; Dec. Dig. § 408.* See, also, 11 Va.-W. Va. Enc. Dig. 730.]

15. Equity (§ 408*)—Commissioner's Report—Analysis of Evidence.—It is not proper for a commissioner in equity, in making his report, to submit an analysis of the evidence which has been prepared by the agent of the successful party.

[Ed. Note.—For other cases, see Equity, Cent. Dig. § 901; Dec. Dig. § 408.* See, also, 11 Va.-W. Va. Enc. Dig. 730.]

16. Equity (§ 393*)—Commissioners—Nature of Office.—A commissioner in equity is a quasi judicial officer.

[Ed. Note.—For other cases, see Equity, Cent. Dig. § 852; Dec. Dig. § 393.* See, also, 11 Va.-W. Va. Enc. Dig. 719.]

17. Appeal and Error (§ 1044*)—Review—Harmless Error—Report of Commissioner.—Where a commissioner in equity erroneously al-

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

lows an agent of the successful party to make an analysis of the evidence submitted to him, which he files with his report, error in not striking out the analysis is not prejudicial, where the evidence is all in the record, and can be examined without aid of the analysis.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4123; Dec. Dig. § 1044.* See, also, 1 Va.-W. Va. Enc. Dig. 582; Id. 730.]

Appeal from Circuit Court of City of Roanoke.

Foreign attachment by Gertrude Blair, against the Mountain Lake Land Company. From a decree confirming a report in favor of complainant, defendant appeals. Affirmed.

Williams & Williams, W. R. Thompson, and J. R. Johnson, for appellant.

R. E. Scott, and S. A. Anderson, for appellee.

HARRISON, J. This foreign attachment suit in equity was brought by the appellee, Gertrude Blair, to hold the appellant liable to her for certain indebtedness due to her from the Mountain Lake Lumber Company.

A demurrer to the bill was properly overruled, and the cause was referred to a commissioner to take evidence and state certain accounts. In response to this order, a report was filed, finding the appellant liable to the appellee for the claim asserted by her.

From a decree confirming this report, the present appeal has been taken, bringing before us a record of more than 1,100 printed pages, containing a mass of documentary evidence, depositions, affidavits, statements, etc., much of it irrelevant, and throwing little or no light upon the questions at issue. From this mass of matter we have ascertained the following material facts, which we find to be satisfactorily established by competent evidence:

The Mountain Lake Lumber Company was a foreign corporation doing business in this state. It was organized under the laws of West Virginia, with a capital stock of \$500, upon which 10 per cent., aggregating \$50, was paid at the time of its organization. By its charter this company had the power to increase this stock to \$1,000,000. This power was exercised, and additional stock to the amount \$999,500 was issued to its officers, directors, and their connections, nothing being paid thereon by any of them. This entire issue of stock was subsequently transferred to Frank Woodman for the use and benefit of the Mountain Lake Land Company, the appellant, a Virginia corporation. By

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

virtue of its ownership of the stock, the appellant took possession of and converted to its own use all the assets of the Mountain Lake Lumber Company, the debtor of the appellee, who was the owner by assignment of its obligations to the amount of \$26,902.45, with interest, subject to certain credits.

These facts being established by the record, we have to inquire whether the appellant company is liable to the creditors of the Mountain Lake Lumber Company, and, if so, was it proper in this case, on a bill in equity, to decree against the appellant, the home defendant, in favor of the appellee, holding the established obligations of the Mountain Lake Lumber Company?

The appellant company having become a stockholder in the lumber company, a West Virginia corporation, its liability to creditors of that company must be determined by the laws of West Virginia; and it is contended that the law of West Virginia on this subject is not averred in the bill nor proven in the cause, and therefore cannot be considered.

There is no express averment in the bill as to the law of West Virginia on the case there made, but the bill alleges a state of facts under which the liability of the defendant is to be determined by those laws. In the absence of proof as to the law of West Virginia, the court will presume that the common law prevails there and will determine the rights of the parties according to the principles of the common law. The courts of this state will not take judicial cognizance of the laws of our sister states at variance with the common law, but upon common-law questions the legal presumption is that the common law of a sister state is similar to that of our own. *Houghtaling v. Ball*, 19 Mo. 84, 59 Am. Dec. 331; *Stewart v. Conrad's Adm'r*, 100 Va. 128, 40 S. E. 624; *N. & W. Ry. Co. v. Denny's Adm'r*, 106 Va. 383, 56 S. E. 321. This case must therefore be decided according to the principles of the common law.

The next question is, whether the appellant company, as transferee of the stock of the Mountain Lake Lumber Company, and the resultant beneficiary of its assets, is liable at common law to the creditors of that company.

The law is well settled that the creditors of a corporation may compel payment of the stock subscribed, so far as it is necessary for the satisfaction of the debts due by the company. This results from the fact that the whole subscribed capital is a trust fund for the payment of creditors when the company becomes insolvent. *Thompson on Corp.* vol. 2, §§ 1562-1566, 1578, 1579, 1582; *Beach on Private Corp.* p. 266, § 118; 2 *Morawetz, Private Corp.* §§ 820, 821; *Scoville v. Thayer*, 105 U. S. 143, 26 L. Ed. 968; *Handley v. Stutz*, 139 U. S. 417, 11 Sup. Ct. 530, 35 L. Ed. 227; *Potts v. Wallace*, 146 U. S. 689, 13 Sup. Ct. 196,

36 L. Ed. 1135. This doctrine has been sanctioned and followed in the case of *Martin v. South Salem Land Co.*, 94 Va. 28, 26 S. E. 591.

It is quite as well established that the transferee of such stock, with notice that it has not been paid for, which the appellant in this case had, is liable to the same extent as the original holder. The transferee succeeds not only to the rights but also to the liabilities of the transferror, and, in the event of the insolvency of the corporation, he is liable to contribute to the payment of its debts in like manner as if he were an original subscriber. 3 *Thompson on Corp.* § 3222; *Merimac Mining Co. v. Levy*, 54 Pa. 227, 93 Am. Dec. 697; *Higgins v. Bank*, 193 Ill. 400, 61 N. E. 1026; *Webster v. Upton*, 91 U. S. 70, 23 L. Ed. 384; *Pullman v. Upton*, 96 U. S. 328, 24 L. Ed. 818.

After pointing out that it is settled law that whatever has not been paid on the stock of a corporation, and which ought to be paid, is a trust fund out of which corporate creditors have a right of payment prior to the holder of the stock, Mr. Thompson says that, "in affording relief to creditors of corporations on this ground, courts of equity proceed on the familiar principle that whoever is found in the possession of a trust fund, under circumstances which charge him with a knowledge of the trust, is bound to account as trustee to those beneficially interested in such fund." 3 *Thompson on Corp.* §§ 2956, 2957.

We shall now consider the question whether a Virginia court of equity, having jurisdiction of the real owner of the stock of a foreign corporation, can enforce against the holder of such stock a liability in favor of a creditor residing in this state; it being contended that, inasmuch as the Mountain Lake Lumber Company is a foreign corporation, the courts of this state cannot enforce the liability of one of its stockholders, even though that liability be to a creditor residing in Virginia.

As already shown, the rights and liabilities of a stockholder in a foreign corporation are fixed by the law of the domicile of the corporation, and he must be held to have contracted with reference to the laws of the state under which the corporation was organized; but it does not follow that his liability as such stockholder cannot be enforced by the courts of the stockholder's domicile, for such liability rests upon contract, and upon familiar principles such a right will be enforced by the courts everywhere; provided, that jurisdiction of the party ultimately liable can be obtained.

The law on this subject is very clearly stated by Beach in his work on *Private Corporations* (volume 1, § 148). He says: "Where a person becomes a stockholder, in a corporation organized under the laws of a foreign state, he must be held to contract with reference to all the laws of the state under which the cor-

poration is organized, and which enter into its constitution; and the extent of his individual liability as a shareholder to the creditors of the company must be determined by the laws of that state, not because such laws are in force in the other state, but because he has voluntarily agreed to the terms of the company's constitution. It is equally clear, upon both principle and authority, that this liability may be enforced by creditors whenever they can obtain jurisdiction of the necessary parties. This does not depend upon any principle of comity, but upon the right to enforce in another jurisdiction a contract validly entered into."

Discussing the liability of a resident stockholder of a foreign corporation, Thompson on Corporations says: "If the liability of a resident stockholder of a foreign corporation rests in contract merely, as in the case of the obligation to pay for shares of stock which he enters into, who has subscribed for them, or who has purchased them from a subscriber or holder, before payment, and if the obligation thus assumed is valid and subsisting, according to the law of the domicile of the corporation, it will be good everywhere, and upon obvious principles will be enforced in the courts of every other state or country." 3 *Thomp. on Corp.* § 3047.

Again it is said: "It may be confidently stated that, where the foreign corporation has property situated within the domestic jurisdiction, the road is open to proceedings in rem in the domestic tribunals against such property on the part of creditors and others having claims against it, whether such persons be residents or nonresidents. Where the creditors or claimants against the property are domestic citizens or residents, the jurisdiction is undoubted; and, where they are nonresidents, the grounds of jurisdiction seem to be equally clear." 6 *Thompson on Corp.* § 8059.

Morawetz on Corporations is to the same effect. This author says: "It seems clear upon principle that a creditor of a corporation whose shareholders are individually liable for its debts may maintain a suit to enforce their liability, wherever he can obtain jurisdiction over the necessary parties." After stating that the right to maintain such a suit does not depend upon the comity of the state where the suit is brought, but upon the willingness of the courts to enforce a foreign contract, he says: "A refusal to grant a remedy in a case of this kind would not be a refusal to enforce a foreign law; it would be simply a denial of justice." 2 *Morawetz on Corp.* § 875.

The doctrine laid down by these authors is fully sustained by the adjudicated cases. *Nimick v. Iron Works*, 25 W. Va. 198; *Crofoot v. Thatcher*, 19 Utah 212, 57 Pac. 171, 75 Am. St. Rep. 725; *Guernsey v. Moore*, 131 Mo. 650, 32 S. W. 1132; *Aultman's Appeal*, 98 Pa. 505.

It is further contended that, the Mountain Lake Lumber Company being a foreign corporation, the courts of this state have no control over it, because such courts have no power to interfere with the domestic affairs of a foreign corporation, and therefore have no power to wind up or administer its assets.

It is a sufficient answer to this contention to say that it is not the object of this suit to interfere with the domestic affairs of a foreign corporation or to wind up its affairs. The suit is brought by a Virginia creditor of the foreign corporation against the appellant company, a domestic corporation owning practically all of the stock of the foreign corporation which has not been paid for, to enforce the satisfaction of her claim out of what the appellant owes on the stock held by it, which is a trust fund in its hands for the benefit of the creditors of the foreign corporation.

It is well settled that the other stockholders, if any, and the other creditors of the company, if any, are not necessary parties to a suit to enforce the liability of a stockholder in favor of a creditor. Nor is it necessary to wind up the foreign corporation in order to enforce such a liability. In such a case the liability of the stockholder is several, and not joint. The appellant company cannot complain that others equally liable with it are not sued. If in this proceeding the appellant is required to pay more than its proportionate share of the debt asserted, it may in an action against the remaining stockholders require them to contribute their fair share. *Thompson v. Reno Savings Bank*, 19 Nev. 242, 9 Pac. 121, 3 Am. St. Rep. 797-803; *Hatch v. Dana*, 101 U. S. 210, 25 L. Ed. 885; *Ogilvie v. Knox Ins. Co.*, 22 How. 382, 16 L. Ed. 349; *Aultman's Appeal*, supra.

In the light of the authorities cited, it is clear that in this case the circuit court had the power to enter the decree complained of.

But it is contended that it was precluded from doing so by the Virginia statute. Acts 1897-98, p. 16, c. 20 (Va. Code 1904, § 1103a).

We are of opinion that this act has no application to a case like the one under consideration. In the case at bar, the stock of the foreign corporation was transferred to and is now held by Frank Woodman, a nonresident of Virginia, and a suit against him, the legal holder of the stock, is expressly excluded by the terms of the act. It is true that the transfer of these shares to Woodman was for the benefit of the appellant company, and that by means of such transfer appellant has possessed itself of all of the assets of the foreign corporation; yet these facts, while they fasten upon appellant an equitable liability for the debts of the company, confer no liability which can be enforced at law against the appellant. The right of action at law upon the contract of subscription, the one contemplated by the act in question,

would be against Woodman, the holder at law of the stock, who is a nonresident and therefore excepted from the act.

The action contemplated by the statute is one for the unpaid subscription to a joint-stock company—a purely legal demand. The only questions committed to the jurisdiction of the common-law courts by the express terms of the act are those involving the validity of the subscription, requiring such actions to be brought at the home of the defendant. The answer of the appellant in this case avers no defense going to the validity of the subscription. It does not deny the issue of the stock as charged, nor the transfer thereof to Woodman; the only defense made by the answer of the appellant is a denial of the facts showing its equitable liability.

When the proof is considered, the utter inapplicability of the statute invoked is easily seen. Prior to the passage of this act, it was the practice of courts of equity, in winding up insolvent domestic corporations at the instance of creditors, who asked to do so, to convene all the stockholders of such companies, and not only levy assessments upon the unpaid stock sufficient to pay the debts, but at the same time compel each individual stockholder, by a decree in the cause, to pay the amount thus assessed, thereby determining both the question as to the validity of the subscription and the amount payable thereon, questions which, if raised under other circumstances, were cognizable only at law. All that was intended to be accomplished by the statute was to deprive courts of equity of this concurrent jurisdiction with courts of law in the enforcement of the legal right, and to restrict the bringing of actions upon the contract of subscription to the law court. Apart from this purpose of the act, it leaves courts of chancery with their jurisdiction unimpaired. *Reed v. Gold*, 102 Va. 37, 45 S. E. 868.

If this act was ever intended to apply to foreign corporations, or to any other than to domestic joint-stock companies, which we gravely doubt, it was clearly never intended to apply to a case like the one before us, where a resident creditor of a foreign corporation is attempting to enforce the equitable liability of a domestic corporation to satisfy her claim.

It is contended that Judge Saunders was without jurisdiction to determine this cause by the vacation decree entered by him on the 23d day of August, 1906—that his powers in the premises had then expired.

It appears that Judge Saunders, who was holding the circuit court of Roanoke city, by appointment, during the disability of Judge Blair, who presided over that circuit, entered a decree at the February term, 1905, under section 3427 of the Code of 1904, making this cause, of his own motion, a vacation cause. The matter was under consideration by him until August 23, 1906,

when he rendered the decree complained of. While Judge Saunders had the cause under consideration, Judge Blair died, and Judge W. W. Moffett was duly elected and qualified as his successor.

It is not necessary to pass upon the question of Judge Saunders' power to enter the vacation order of August, 1906, for the reason that on the 28th day of September, 1906, at a regular term of the court, presided over by the duly elected and qualified judge thereof, having full jurisdiction of the subject-matter and the parties, a decree was entered "ratifying, approving, confirming, and adopting" the decree of Judge Saunders as the decree of the court. This decree of the September term, 1906, being the decree of a court of competent jurisdiction, it follows that, if the decree of Judge Saunders was invalid because he was without jurisdiction to enter it at the time he did, this action of the court in term time made Judge Saunders' decree the decree of the court, and it will not be disturbed if this court can see from the whole record that there is no error of which the appellant can complain.

During the progress of the taking of depositions, numerous exceptions were noted by counsel for the appellant, and the court was asked to pass specifically and directly upon each of such exceptions. This the court declined to do, and overruled all of such exceptions in a general way. This is assigned as error.

These exceptions are too numerous to mention. They are for the most part without merit. There was sufficient evidence which was free from all reasonable objection to sustain the conclusion reached, and therefore the court was entirely right in declining to pass upon these multitudinous exceptions in detail.

There is a like assignment of error with respect to numerous exceptions taken by appellant to the report of the commissioner. The court declined to pass upon each of these exceptions separately and in detail, and, being of opinion that none were well taken, overruled them.

This action of the court was in accordance with the settled practice, and is free from error. We have examined these exceptions, and concur in the conclusion of the circuit court that they were not well taken, and were, therefore, properly overruled.

The commissioner filed with his report an analysis of the evidence, or a series of references to the evidence, upon which he based his conclusions. This analysis is the subject of exception, and the court was asked to suppress it and strike it from the record, upon the ground that the commissioner should only have reported upon the facts submitted to him, and upon the further ground, as alleged, that the so-called "analysis" of the evidence was the work of one W. J. Blair, the agent of the appellee in the

conduct of her case. The court declined to strike out this paper, and its action in this regard is assigned as error.

There was no objection to the commissioner filing with his report an analysis of the mass of evidence that had been submitted to him. It was, however, not proper for him to allow the agent of the appellee to take any part in the preparation of this paper. A commissioner is a quasi judicial officer, and his work should be free from all suspicion of being improperly influenced or interfered with by any party to the suit, or by the agent of any such party. In the case at bar, however, it is immaterial whether this paper is included with or considered a part of the report. It is not the findings of the commissioner, and is only useful as an aid in examining the great volume of evidence to which it refers. That evidence is all in the record, and can be examined without the aid of the so-called "analysis," and therefore the appellant has suffered no prejudice by the court's refusal to strike it from the record.

There are other minor objections to the rulings of the court during the progress of this cause. We will, however, not prolong this opinion to discuss these objections in detail. It is enough to say that each of them has received full consideration, and they disclose no error prejudicial to the rights of the appellant, and their formal disposition could have no possible effect upon the result reached in the case.

On the whole case, there is no escape from the conclusion that the appellant company is liable to the appellee, a creditor of the Mountain Lake Lumber Company, and the decrees complained of must be affirmed.

Note.

The point decided in syl. 1, does not seem to have been decided in Virginia or West Virginia up to the present time, but the ruling is clearly in line with the authorities. Points 2 and 3 of the syllabus are elementary and need no comment. The same is true of point 4, and in addition to the Virginia case cited in the opinion, a full line of cases will be found in 3 Va.-W. Va. Enc.-Dig. 524. While no Va. or W. Va. cases are cited, for the well established proposition of law laid down in point 5 of the syllabus, it is supported by *Gold v. Paynter*, 101 Va. 714, 44 S. E. 920; *Hamilton v. Glenn*, 85 Va. 901, 9 S. E. 129. See 12 Va.-W. Va. Enc.-Dig. 816.

The legal propositions contained in points 6 and 7 are undoubtedly correct, but are hardly supported by the West Virginia case (*Nimick v. Mingo Iron Works*, 25 W. Va. 198), cited in support of the former. That case holds that a statutory individual liability under the laws of Ohio *could not* be enforced in the courts of West Virginia against a stockholder in an Ohio corporation. This was subsequently changed by statute in West Virginia. See *Swing v. Bentley, etc., Co.*, 45 W. Va. 283, 31 S. E. 925, and 12 Va.-W. Va. Enc.-Dig. 832-3, where these cases are set out at length.

The right of contribution of a stockholder who has been forced to pay more than his proportionate share, against the other stockholders, stated in point 9 of the syllabus, seems to follow as a necessary corollary from the principle laid down in *Wilson v. Hundley*, 96 Va.

96, 105, 30 S. E. 492, that a subscription to stock is "not only an undertaking to the company, but with all other subscribers. It is of the essence of the contract between the shareholders that they shall all contribute ratably to the payment of the company's debts and liabilities." See 12 Va.-W. Va. Enc.-Dig. 812.

Point 10 of the syllabus is a further circumscription of the effect of § 1103a of the Code, 1904, along the line of *Reed v. Gold*, 102 Va. 37, 45 S. E. 868. See 12 Va.-W. Va. Enc.-Dig. 817, where the construction of this statute by that and other cases is treated. *Reed v. Gold*, preserves unimpaired the jurisdiction of equity to wind up insolvent corporations and to make assessments on unpaid stock subscriptions, the enforcement being left to the law courts, and this case reaffirms that and sets additional bounds to the operation of the statute.

CITY OF NORFOLK *v.* BOARD OF TRADE & BUSINESS MEN'S ASS'N.
SAME *v.* VIRGINIA CLUB.

March 11, 1909.

[63 S. E. 987.]

1. Constitutional Law (§ 28*)—Legislative Power—Constitutional Limitations.—The power of the Legislature to enact laws is unrestrained, except by the Constitution.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. § 30; Dec. Dig. § 26.* See, also, 3 Va.-W. Va. Enc. Dig. 161, et seq.]

2. Statutes (§ 79*)—Special Laws.—Acts 1904, p. 214, c. 116, providing that any corporation chartered as a social club, and paying to the state the tax imposed, may distribute intoxicating liquors to its members without obtaining any license or paying any other tax, etc., is a general law, and is not in conflict with Const. 1902, § 64 (Code 1904, p. ccxxiv), forbidding special laws granting to any private corporation any special privilege.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. § 84; Dec. Dig. § 79.* See, also, 3 Va.-W. Va. Enc. Dig. 535; 12 Id. 749.]

3. Intoxicating Liquors (§ 45*)—Licenses—Statutes.—Acts 1904, p. 214, c. 116, providing that any corporation chartered as a social club, and paying to the state the tax imposed, may distribute intoxicating liquors to its members without obtaining any license or paying any other tax, either state, municipal, or county, for the privilege, etc., adopted subsequent to Code 1904, § 1042, conferring on cities and towns authority to impose a license tax, etc., operates as a limitation on such authority, and is but an amendment of the section.

[Ed. Note.—For other cases, see Intoxicating Liquors, Dec. Dig. § 45.* See, also, 12 Va.-W. Va. Enc. Dig. 778.]

4. Intoxicating Liquors (§ 15*)—Regulation—Statutes—Validity.—Acts 1904, p. 214, c. 116, providing that any corporation chartered

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.